

ORIGINAL

EX PARTE OR LATE FILED



Qwest
1020 Nineteenth Street NW, Suite 700
Washington, DC 20036
Phone 202.429.3120
Facsimile 202.296.5157

Melissa E. Newman
Vice President-Federal Regulatory

RECEIVED

SEP 29 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 29, 2000

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Written *Ex Parte* Statement of Qwest Corporation, Inc. in Response to Written *Ex Parte* Statement of e.spire Communications, Inc. Regarding the Conversion of Special Access Circuits to Unbundled Network Elements in CC Docket 96-98

Dear Ms. Salas:

The purpose of this ex parte is to respond to the letter filed by e.spire Communications, Inc. ("e.spire") on September 7, 2000 complaining that Qwest¹ is refusing to convert unbundled network elements ("UNEs") that will be combined with its tariffed special access services. Apparently, e.spire believes Qwest must allow unbundled loop-transport combinations to be combined with its tariffed special access services or be willing to perform any necessary "regrooming" of e.spire's facilities at no charge. Qwest believes that e.spire's demand does not comport with the Commission's June 2, 2000 *Supplemental Order Clarification* in CC Docket No. 96-98, FCC 00-183 or the definition of a UNE under Section 251(c) of the 1996 Act.²

The Commission established clear guidelines on the conversion of unbundled loop transport combinations in its *Supplemental Order Clarification*. In particular, the Commission found that the three options for satisfying the "significant amount of local exchange service" requirement presented in a February 28, 2000 Joint Letter submitted by a coalition of Incumbent Local Exchange Carrier's (ILEC's) (including Qwest) and

¹ On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

² 47 U.S.C. Section 251(c).

No. of Copies rec'd 012
List A B C D E

Competitive Local Exchange Carrier's (CLEC's) represented a reasonable compromise and adopted them as a safe harbor. Each of the three local usage options endorsed by the Commission "does not allow loop-transport combinations to be connected to the ILEC's tariffed services."

Indeed, the Commission expressly rejected the suggestion that it eliminate the prohibition on "combining loops or loop-transport combinations with tariffed special access services" in the local usage options. The Commission was concerned that removing this prohibition could lead to the use of unbundled network elements by carriers solely or primarily to bypass special access services. Although the Commission referred to the combination prohibition as a "commingling" prohibition, that term is somewhat misleading because there is no prohibition on the type of traffic that can be carried over an ILEC's tariffed special access services. Rather, the Commission confirmed that an ILEC may prohibit UNE loop-transport combinations from being combined with its tariffed transport service.

What e.spire is seeking to do is convert only the DS1 portion of its special access service to unbundled DS1 circuits at UNE rates. In e.spire's current configuration, all of the DS1 circuits it is requesting to convert to UNE rates are connected to tariffed DS3s which are not eligible for conversion under the *Supplemental Order Clarification*. Therefore, in e.spire's requested configuration, these unbundled DS1 circuits would be combined with Qwest's tariffed DS3 special access services. Fundamentally, a rule that would require an ILEC to combine UNE loop-transport combinations with its tariffed transport service in this manner would be contrary to the entire UNE structure, as it would simply create a new tariffed service at a lower price. A special access service is a point-to-point service. If an ILEC provides a UNE loop "facility" from the customer premises to a wire center and connects that facility directly to its tariffed point-to-point special access service between a wire center and another premises (or Point of Presence), the result is simply a unified special access service between the two end points. The only difference would be the price of the service. Clearly, tariffed special access services are not UNEs, and carriers purchasing special access services must pay the tariffed rate for the service.

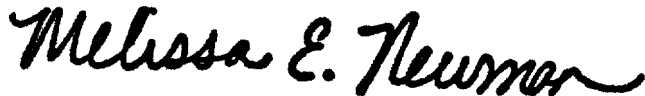
Further, if the Commission were to define a new UNE consisting of a UNE loop connected by the ILEC to the ILEC's tariff special access circuit, that UNE would not satisfy the impairment standard for unbundling set forth in Section 251(d)(2) of the 1996 Act. As discussed above, the end-to-end circuit would be nothing more and nothing less than a special access circuit. It would be essentially circular to claim that failure to obtain access to a special access circuit impeded competition when that same special access circuit already is available -- under tariff -- as required by the Commission. It should also be noted that requiring ILECs to combine UNEs and tariffed services on behalf of requesting carriers would directly contravene the Eighth Circuit's recent decision³ reaffirming that the Commission does not have the authority to mandate UNE combinations.

³ Iowa Utils. Bd. v. FCC, 219 F.3d 744 (D.C.Cir. 2000).

It should not be surprising that carriers such as e.spire might need to reconfigure their legacy networks in order to take advantage of the rate reductions available under the *Supplemental Order Clarification*. However, the fact that e.spire has chosen to provide local exchange service using Qwest's federally tariffed special access services does not mean it is entitled to have Qwest regroom these circuits for free. If anything, this shows that carriers can provide competitive local service without receiving access to loop-transport combinations at UNE rates. In any event, Qwest's federally tariffed regrooming rate of \$122.50 per circuit provides a cost-efficient means for e.spire to reconfigure its network consistent with the *Supplemental Order Clarification*. For example, in one Central Office e.spire could regroom 67 DS1 circuits at a cost of \$8,207.50 and receive the benefit of \$10,176 in savings off the monthly tariffed rate for these circuits. *That means e.spire would recover the cost of regrooming the 67 circuits in just 25 days, and the savings would continue as long as the circuits are in service.* (See Attachment 1) e.spire would experience additional savings after it regrooms because it would have to convert the DS3s that carry the UNE-C DS1s to combinations, thereby receiving the benefit of UNE rates. Moreover, once this one-time regrooming is performed, e.spire would be in a good position to add new local service customers using UNE loop-transport combinations.

In summary, there is no basis for e.spire's demand that Qwest reconfigure its existing network at no charge to facilitate the conversion to UNE rates. Qwest reasonably expects that e.spire should be willing to pay the relatively modest cost of regrooming its existing circuits in order to take advantage of the significant rate reductions available under the *Supplemental Order Clarification*.

Sincerely,

A handwritten signature in black ink that reads "Melissa E. Newman". The signature is written in a cursive, flowing style.

Melissa E. Newman
Vice President-Federal Regulatory
Qwest

Regrooming example:
Specific circuit information withheld to protect proprietary customer information.

ILLUSTRATIVE, NOT INTENDED TO REPRESENT MOST EFFICIENT REGROOMING

		Current configuration		Regroomed configuration		
Tariffed DS3	Used channels on	# DS1s	Status	# DS1s	Status	# Regrooms
X01 T3	16	7	Tariffed	0	Tariffed	0
		9	UNE-C	15	UNE-C	6
X02 T3	12	10	Tariffed	17	Tariffed	7
		2	UNE-C	0	UNE-C	0
X03 T3	24	13	Tariffed	13	Tariffed	0
		10	LIS	10	LIS	0
		1	UNE-C	0	UNE-C	0
X04 T3	7	1	Tariffed	24	Tariffed	23
		6	UNE-C	0	UNE-C	0
X05 T3	19	8	Tariffed	0	Tariffed	0
		11	UNE-C	23	UNE-C	12
X06 T3	17	12	Tariffed	12	Tariffed	0
		5	UNE-C	0	UNE-C	0
X07 T3	22	15	Tariffed	0	Tariffed	0
		7	UNE-C	26	UNE-C	19
X08 T3	17	9	Tariffed	9	Tariffed	0
		8	UNE-C	0	UNE-C	0
X09 T3	20	16	Tariffed	16	Tariffed	0
		4	UNE-C	0	UNE-C	0
X10 T3	22	16	Tariffed	16	Tariffed	0
		6	UNE-C	0	UNE-C	0
X11 T3	20	16	Tariffed	16	Tariffed	0
		4	UNE-C	0	UNE-C	0
X12 T3	21	20	Tariffed	20	Tariffed	0
		1	UNE-C	0	UNE-C	0
Total # DS1s						
Tariffed		64				
LIS		10				
UNE-C		143				
Total		217				

In the regroomed configuration there are no DS3s that carry both UNE-C and Tariffed services. The pure DS3s that carry only UNE-C DS1s can (and must) be converted to UNE-C so that "their" DS1s can be converted.

Total DS1s regroomed
FCC regroom rate
Total regroom charges

67
\$ 122.50
\$ 8,207.50

Approx conversion savings
Payback period

\$ 10,176 per DS1, based on all circuits requested to be converted
25 calendar days, based on a 31 day month